United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

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Supplement No. 37 (A/54/37)

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Note

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Chapter I
Introduction

1. The third session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 was convened in accordance with paragraphs 11 and 12 of Assembly resolution 53/108 of 8 December 1998. The Committee met at Headquarters from 15 to 26 March 1999.

2. In accordance with paragraph 9 of resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA).[1]

3. On behalf of the Secretary-General, the Legal Counsel, Mr. Hans Corell, opened the third session of the Ad Hoc Committee.

4. The Director of the Codification Division of the Office of Legal Affairs, Mr. Václav Mikulka, acted as Secretary of the Ad Hoc Committee, assisted by Ms. Sachiko Kuwabara-Yamamoto (Deputy Secretary), Ms. Christiane Bourloyannis-Vrailas, Mr. Vladimir Rudnitsky, Mr. Renan Villacis and Mr. Arnold Pronto of the Codification Division.

5. At the 8th meeting of the Committee, on 15 March 1999, it was agreed that the membership of the Bureau would remain the same as at the previous session, with the exception of one Vice-Chairman. The Bureau was thus constituted as follows:

Chairman:

Mr. Philippe Kirsch (Canada)

Vice-Chairmen:

Mr. Carlos Fernando Diaz (Costa Rica)
Mr. Mohammed Gomaa (Egypt)
Mr. Rohan Perera (Sri Lanka)

Rapporteur:

Mr. Martin Šmejkal (Czech Republic)

6. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.6):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Continuation of the elaboration of a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument and elaboration of a draft international convention for the suppression of terrorist financing to supplement related existing international instruments, pursuant to paragraphs 11 and 12 of General Assembly resolution 53/108 of 8 December 1998.
6. Adoption of the report.

7. The Ad Hoc Committee had before it the revised text of a draft convention on the suppression of acts of nuclear terrorism proposed by the Friends of the Chairman (A/C.6/53/L.4, annex), as well as a draft international convention for the suppression of the financing of terrorism submitted by France (A/AC.252/L.7 and Corr.1) together with an explanatory note to the draft convention submitted by the same delegation (A/AC.252/L.7/Add.1).

Chapter II
Proceedings

8. The Ad Hoc Committee held a general exchange of views at its 8th, 9th and 10th meetings, on 15, 16 and 18 March 1999.

9. At the 9th meeting, the Ad Hoc Committee decided to conduct its work in the form of a Working Group of the Whole. The Bureau and secretariat of the Ad Hoc Committee also served as the Bureau and secretariat of the Working Group.

10. The Working Group commenced its work on the elaboration of an international convention for the suppression of terrorist financing. It proceeded in three stages. In its first stage, the Working Group conducted a first reading of those articles unique to the proposed text under consideration, namely articles 1, 2, 5, 8, 12, paragraphs 3 and 4, and 17, as well as of those articles which were similar, but not identical, to the corresponding provisions of the International Convention for the Suppression of Terrorist Bombings, namely articles 3, 6 and 7, paragraphs 1, 2 and 5, on the basis of the text proposed in document A/AC.252/L.7 and Corr.1. Article 4 was also reviewed.

11. In the second stage of the work, the Working Group conducted a second reading of articles 2, 5, 8, 12 and additional provisions, on the basis of a revised text submitted by France (A/AC.252/1999/WP.45; see annex III to the present report), as well as of article 17 on the basis of a revised text submitted by France (A/AC.252/1999/WP.47; see annex III), articles 4 and 7 on the basis of a revised text submitted by Australia (A/AC.252/1999/WP.51; see annex III). The Coordinators of the informal discussions on articles

1 and 2, and 3 and 6, respectively, presented oral reports to the Working Group.

12. Following the completion of the second reading, the Bureau of the Committee prepared a discussion paper on articles 3 to 25 (A/AC.252/1999/CRP.2; see annex I.A) as a basis for consideration by the Working Group of the Sixth Committee at its next session.

13. At the 11th meeting of the Working Group, on 25 March 1999, France submitted a working paper on articles 1 and 2 (see annex I.B), based on the discussion of those provisions during the informal consultations.

14. Written amendments and proposals on the draft international convention on the suppression of terrorist financing were submitted and considered during the discussions (see annex III). Oral amendments and proposals were also discussed.

15. At the 11th meeting, on 26 March 1999, the Ad Hoc Committee adopted the report of its third session.

16. An informal summary of the discussions in the Working Group is contained in annex IV to the present report. The summary was prepared by the Rapporteur for reference purposes only and not as a record of the discussions.

17. Annex III contains a list of the written amendments and proposals submitted by delegates in connection with the elaboration of a draft international convention for the suppression of the financing of terrorism.

Chapter III
Summary of the general debate

18. The Chairman of the Ad Hoc Committee recalled the mandate of the Committee concerning the work at its third session, which was to continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument and initiating the elaboration of the draft international convention for the suppression of the financing of terrorism. In that connection, the Chairman noted the advanced stage of the work on the draft convention for the suppression of acts of nuclear terrorism and expressed the hope that the remaining issue concerning its scope would be resolved in an expeditious manner. He also welcomed the proposed text of the draft convention for the suppression of the financing of terrorism and invited delegations to present their views on both of the draft conventions before the Committee.

A. Elaboration of the draft international convention for the suppression of acts of nuclear terrorism, proposed by the Russian Federation

19. At the 8th meeting of the Ad Hoc Committee, the representative of the Russian Federation stated that the growing ability of terrorist groups to acquire sophisticated technologies and weapons of mass destruction made international terrorism a most serious problem calling for effective and concerted action by the international community. In that connection, he stressed the importance of completing work on the draft convention for the suppression of acts of nuclear terrorism (see A/C.6/53/L.4), noting that the text of the convention had been almost entirely agreed upon at the previous session of the Working Group, in 1998. It was considered possible to reach a compromise on the remaining issue, on scope of the convention, as the draft convention did not impinge upon acts regulated by other norms of international law and its provisions were consistent with those of other relevant conventions. Furthermore, a failure to arrive at a consensus on the text of the draft convention would send a wrong signal to the terrorist groups.

20. A number of delegations shared the view of the representative of the Russian Federation and expressed support for the early conclusion of the work on the draft convention. It was observed that the draft convention was an important complement to the existing anti-terrorist conventions, providing an effective legal framework for combating and discouraging acts of nuclear terrorism, which posed a real threat to the maintenance of international peace and security. Some delegations reiterated the view that activities of armed forces should be outside the scope of the draft convention and that the relevant provisions of the Terrorist Bombings Convention could be used as the basis for the exclusion clause of the draft convention.

21. Some delegations stressed the need to ensure consistency of the provisions of the draft convention with those of the existing international legal instruments for combating terrorism and noted in particular the importance of paying proper attention to the work of the International Atomic Energy Agency.

22. No formal or informal meetings were held during the third session of the Ad Hoc Committee to discuss the draft convention contained in document A/C.6/53/L.4.

23. At the 11th meeting, concern was expressed about the lack of consultations on the scope of the draft convention during the session. A number of delegations which remained

convinced that the special character of the subject matter of the draft convention did not permit the exclusion of the activities of armed forces from its scope reiterated their position and therefore insisted that its article 4 be deleted. Other delegations expressed the hope that the remaining issues concerning the scope of the draft convention would be resolved successfully with a further exchange of positive and constructive views.

24. The representative of IAEA made a statement regarding the draft international convention for the suppression of acts of nuclear terrorism, recalling that the Agency, at the invitation of the General Assembly, had participated in the work of the Ad Hoc Committee, especially with regard to technical expertise. IAEA regretted that it had not been possible to finalize work on the draft convention and expressed the hope that said result could be attained at the next session of the Committee. IAEA also noted that the draft convention recognized and built upon the Agency's activities. Furthermore, IAEA reiterated its commitment to fight nuclear terrorism and its willingness to assist the Ad Hoc Committee in its work.

25. The Chairman recalled that the General Assembly in its resolution 53/108 of 8 December 1998, had requested the Ad Hoc Committee to continue to elaborate a draft international convention for the suppression of acts of nuclear terrorism with a view to completing the instrument. He urged all delegations to have contacts and hold discussions prior to and at the Working Group of the Sixth Committee in order to resolve the remaining issues concerning the scope of the convention so that the draft convention might be adopted by the General Assembly at its fifty-fourth session.

B. Elaboration of the draft international convention for the suppression of the financing of terrorism, proposed by France

26. The representative of France introduced a revised version of the draft convention for the suppression of the financing of terrorism (A/AC.252/L.7 and Corr.1), the original text of which (A/C.6/53/9) had earlier been submitted by France to the Sixth Committee during the fifty-third session of the General Assembly. It was explained that the revision took into account the views expressed by delegations during the debate in the Sixth Committee and the ensuing consultations on the item.

27. It was stated that existing anti-terrorist conventions did not contain adequate means of countering acts of those who supplied funds or sponsored terrorist attacks. The aim of the draft convention was to fill that gap in international law by adopting an international legal instrument specifically addressing the issue.

28. As regards the definition of financing, it was pointed out that, while the draft convention was focused on the financing of the most serious terrorist acts, all means of financing were covered within the scope of the convention, including both "unlawful" means (such as racketeering) and "lawful" means (such as private and public financing, financing provided by associations, etc.).

29. Moreover, the definition of an offence had been drafted with a twofold aim. First, it was concerned expressly with the financing of acts within the scope of existing anti-terrorist conventions binding upon States parties. Secondly, it was also concerned with the financing of murder, which was not covered by existing conventions (except for the Terrorist Bombings Convention).

30. Concerning the persons at whom the draft convention was aimed, they included those who supplied funds in the knowledge of the intention of recipients to commit terrorist acts. Those who made contributions in good faith were excluded from the scope of the convention. The draft text provided also for a regime of liability for legal entities which might be criminal, civil or administrative in nature.

31. As regards other important elements of the draft convention, the sanctions regime, designed to increase its deterrent effect, provided for the possibility of the seizure or freezing of property assets used in committing the offence, in addition to severe penalties for terrorists. Furthermore, the lifting of banking secrecy for the purposes of mutual legal assistance was an important element of the draft. Some delegations, however, stressed that measures of implementation must be left to national legislation. In addition, the draft provided for preventive measures based on generally accepted principles followed in combating money-laundering, which were designed to encourage States to require financial institutions to improve the identification of their customers.

32. Apart from those new elements, the text of the revised draft was mostly based on the provisions of already existing conventions, adopting, in particular, the formulations of the relevant provisions of the Terrorist Bombings Convention, including the well-established "prosecute or extradite" principle. Thus it was suggested that the discussion should focus primarily on new provisions so as to allow a speedy elaboration of the proposed convention.

33. The draft convention for the suppression of the financing of terrorism was supported by many delegations

as a valuable and timely initiative. It was noted that the draft text was intended not only to punish those financing terrorist acts, but also to prevent such financing through mutual legal assistance and cooperation or by alerting those whose donations were intended for charitable, humanitarian and other legal purposes could be used to finance terrorist activities.

34. Some delegations stressed the difficulty of linking financing and terrorist acts and cautioned against adopting overly broad definitions that would criminalize innocent individuals and genuine charitable organizations.

35. Some delegations indicated that revenues derived from the confiscation of property and assets used to commit terrorist offences under the convention should be allocated to benefit victims and to development activities directed at combating terrorism.

36. Differing views were expressed as regards the issue of whether the scope of the draft convention should go beyond the offences already covered by other conventions.

37. A need to pay full attention to the legal cultures of States in the elaboration of the new convention was stressed. Concerns were also expressed regarding some of the enforcement provisions of the draft.

38. Some delegations emphasized the need to distinguish between legitimate national liberation movements and terrorist groups. They reiterated their view that a universal definition of terrorism should be adopted and that a comprehensive global anti-terrorist convention should be elaborated. It was noted that the work on such a convention should begin following the completion of the two draft conventions currently under the Committee's consideration on the basis of a proposal to be submitted on this issue. Other delegations emphasized that no cause could justify terrorist acts and expressed doubt that a universal definition of terrorism could be elaborated.

39. At both the 8th and the 10th meetings, the point was also made that it should be taken into consideration that international terrorism was linked to other criminal activities such as drug-trafficking and mercenarism, as well as violence pursued as a State policy. Specific examples of terrorist activities which originated in the territory of a foreign State were given. In this connection, special emphasis was placed upon existing State obligations to take effective practical measures to suppress and punish such illegal activities, as well as on the need to introduce restrictive norms regarding the responsibility of States for the prevention and suppression of terrorism in their territories aimed against the security of other States and their citizens. Relevant examples of concrete measures adopted at the national level to combat such criminal acts were also reported.

40. The observer of the International Committee of the Red Cross presented its written comments on the scope of the definition of the offences covered by the draft convention on the suppression of the financing of terrorism[2] and also made a statement in that connection.

41. The Chairman observed that much progress had been made during the third session of the Ad Hoc Committee; the Committee had completed the first and second readings of the main provisions of the convention at the current session and a number of articles had been revised to facilitate further work on the convention. He was of the view that the work on the draft convention could be completed during the current year in the Working Group of the Sixth Committee, for adoption by the General Assembly at its fifty-fourth session.

Notes

[1] For the list of participants of the Ad Hoc Committee at its third session, see document A/AC.252/1999/INF/3.

[2] A/AC.252/1999/INF.2.

Annex I

A. Discussion paper submitted by the Bureau on articles 3 to 25*

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 17 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities carrying out activities or located in its territory or organized under its laws may be held liable when they have, with the full knowledge of one or more persons responsible for their management or control, benefitted from or committed offences set forth in article 2.

2. Such liability may be criminal, civil or administrative, according to the legal principles of the State Party.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

4. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective and proportionate measures.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

* Originally issued as document A/AC.252/1999/CRP.2.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

1. Each State Party shall take appropriate measures for the identification, detection and freezing or seizure of any property, funds or other means used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures for the forfeiture of property, funds and other means used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such proceeds or property, or funds derived from the sale of such proceeds or property.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of criminal acts resulting from the commission of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to

that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

4. None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the ground that it concerns a fiscal offence.

Article 13

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 16

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 17

States Parties shall cooperate in the prevention of the offences set forth in article 2, including by:

1. Taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring their financial institutions and other professions involved in financial transactions to utilize the most efficient measures for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of accounts whose holder or beneficiary is unidentified or unidentifiable, including anonymous accounts or accounts under obviously fictitious names;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international;

(c) Measures for the supervision and licensing of all money-transmission agencies;

(d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

2. Exchanging accurate and verified information in accordance with their domestic law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular, by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons suspected of being involved in such offences;

(ii) The movement of funds or property relating to the commission of such offences.

Article 18

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 19

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 20

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 21

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 22

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 23

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 24

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 25

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on .....

B. Working paper prepared by France on articles 1 and 2

Article 1

For the purposes of this Convention:

1. "Financing" means the transfer [or reception] of funds.

2. "Funds" means cash, assets or any other property, tangible or intangible, however acquired; and notably any type of financial resource, including cash or the currency of any State, bank credits, travellers' cheques; bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form.

3. "Organization" means any group, public or private, of two or more persons, whatever their declared objectives, and legal entities such as companies, partnerships or associations.

4. "State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully proceeds with the financing, by any means, directly or indirectly, of any person or organization with the intention that the funds should be used, or in the knowledge that the funds are to be used, in full or part, to prepare for or to commit:

(a) Offences as defined in annex I to this Convention; or

(b) Acts intended to cause death or serious bodily injury to a civilian or to any other person not engaged in an armed conflict, when such acts, by their nature or context, are designed to intimidate a government or a civilian population.

2. In order to convict a person for an offence under paragraph 1 of this article, it shall not be necessary to prove that the funds were in fact used to prepare for or to commit a specific offence or an offence within a specified category of offences.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 3 of this article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 3 of this article; or

[(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 3 of this article, by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.]

Annex II

Working document submitted by France on the draft international convention for the suppression of the financing of terrorism*

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

Noting that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

Recalling General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should "elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments",

Recalling also General Assembly resolution 52/165 of 15 December 1997, in which the Assembly calls upon States to "consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210" of 17 December 1996,

Recalling further General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly calls upon all States "to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds",

Considering that any act governed by international humanitarian law is not governed by this Convention,

Noting that financing which terrorists may obtain increasingly influences the number and seriousness of international acts of terrorism they commit,

* Originally issued as document A/AC.252/L.7 and Corr.1.

Noting also that existing multilateral legal instruments do not specifically address such financing,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective measures for the prevention of the financing of terrorism as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

Considering that the financing of terrorism is a matter of grave concern to the international community as a whole,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Financing" means the transfer or reception of funds, assets or other property, whether lawful or unlawful, by any means, directly or indirectly, to or from another person or another organization.

2. "Funds" means any type of financial resource, including the cash or currency of any State, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and any other negotiable instrument in any form, including electronic or digital form.

3. "Organization" means any group of persons, whatever their declared objectives, and legal entities such as companies, partnerships or associations.

4. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of a person or organization in the knowledge that such financing will or could be used, in full or in part, in order to prepare or commit:

(a) An offence within the scope of one of the Conventions itemized in the annex, subject to its ratification by the State Party; or

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article, by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 11 to 17 shall, as appropriate, apply in those cases.

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by effective, proportionate and deterrent penalties which take into account the grave nature of those offences.

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities located or having their registered offices in its territory may be held liable when they have knowingly, through the agency of one or more persons responsible for their management or control, derived profits from or participated in the commission of offences referred to in this Convention.

2. Subject to the fundamental legal principles of the State Party, said legal entity may incur criminal, civil or administrative liability.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences or of their accomplices.

4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective measures that have substantial economic consequences for them.

5. The provisions of this article cannot have the effect of calling into question the responsibility of the State as a legal entity.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this

Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack against a national of that State; or

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(c) The offence was directed towards or resulted in the carrying out of an attack against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over one of the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions efficiently, in particular concerning the conditions for prosecuting and the terms and conditions of mutual legal assistance.

Article 8

1. Each State Party shall take appropriate measures to allow for identification, detection, freezing or seizure of any goods, funds or other means used or designed to be used in any manner in order to commit the offences referred to in this Convention, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures to permit the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.

3. Each State Party may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law.

Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences referred to in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. States Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article.

4. None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, a request for extradition or for mutual legal assistance may not be refused on the sole ground that it concerns a fiscal offence.

Article 13

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or

convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 16

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 17

States Parties shall cooperate in the prevention of the offences set forth in article 2, including:

1. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories activities of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;

(b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names;

(ii) With respect to the identification of legal entities, verifying the existence and the legal structure of the customer by obtaining, from the customer or public records, proof of incorporation as a company, including information on the name of the client, its legal form, its address, its directors and provisions on the legal entity's authority to bind;

(iii) Taking measures for preserving for at least five years the necessary documents in connection with the transactions carried out;

2. By exchanging accurate and verified information in accordance with their domestic law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences as set forth in article 2.

Article 18

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 19

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 20

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 21

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 22

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 23

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession,

the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 24

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 25

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on .....

Annex

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Annex III

Written amendments and proposals submitted by delegates in connection with the elaboration of a draft international convention for the suppression of the financing of terrorism

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58. France	A/AC.252/1999/WP.57	Article 17	55
59. Iran (Islamic Republic of) and Lebanon	A/AC.252/1999/WP.58	Article 7, paragraph 6	55
60. Republic of Korea	A/AC.252/1999/WP.59	Article 2, paragraph 1 (a); additional article	55
61. Papua New Guinea	A/AC.252/1999/WP.60	Article 1	56

1. Proposal submitted by Switzerland (A/AC.252/1999/WP.1)

Article 1

Paragraph 1

The term "financing" includes the following acts:

(a) Any direct transfer of funds, assets or other property to a person or organization;

(b) Any reception of funds, assets or other property by a person or organization;

(c) The organization and implementation of all types of fund-raising on behalf of a person or organization.

In a fund-raising context, the transfer of funds, assets or other property is not covered by the term "financing" if it can be demonstrated or it is recognized that the property is also used for humanitarian purposes by the beneficiary person or organization.

2. Proposal submitted by Switzerland (A/AC.252/1999/WP.2)

Article 2

Paragraph 1

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of a person or organization in the knowledge that such financing will be used, in full or in part, to commit:

(a) ...

(b) ...

Paragraph 3

Delete subparagraph (c).

3. Proposal submitted by Switzerland (A/AC.252/1999/WP.3)

Article 5

Paragraph 1

Each State Party shall take the necessary measures to ensure that legal entities located or having their registered offices in its territory may be held liable.

4. Proposal submitted by Switzerland (A/AC.252/1999/WP.4)

Article 12

Paragraph 4

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, a request for

extradition or for mutual legal assistance based on article 2 may not be refused on the sole ground that it concerns a fiscal offence, without prejudice to the constitutional limits and the basic legislation of the States Parties.

Article 13

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance between States Parties as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on article 2 may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

5. Proposal submitted by Switzerland (A/AC.252/1999/WP.5)

Article 17

Paragraph 1 (b) (i)

Adopting regulations prohibiting the opening of accounts whose beneficiary is unidentified or unidentifiable;

6. Proposal submitted by Austria (A/AC.252/1999/WP.6)

Article 1

Paragraph 1

Delete the term "or reception".

Paragraph 2

"Organization" means any group consisting of a larger number of persons, whatever their declared objectives. Such organizations shall be characterized by a hierarchical structure, strategic planning, continuity of purpose and division of labour.

7. Proposal submitted by Belgium (A/AC.252/1999/WP.7)

Article 1

Paragraph 1

Delete the words "directly or indirectly" and insert them in the *chapeau* of article 2, paragraph 1, after the word "proceeds".

Explanation

These terms pertain not to the definition of the word "financing", but to the definition of the offence itself (article 2).

8. Proposal submitted by Guatemala concerning articles 1 and 2 (A/AC.252/1999/WP.8)

Article 1

Paragraph 1

Delete the words "or reception".

Article 2

Add the following paragraph to article 2:

"A. Any person likewise commits an offence within the meaning of this Convention if that person unlawfully receives funds, assets or other property from another person or organization with the intent of using the funds, assets or other property so received, in full or in part, in order to prepare or commit an offence or an act falling, respectively, within the definitions contained in subparagraphs (a) and (b) of paragraph 1 above."

9. Proposal submitted by Australia (A/AC.252/1999/WP.9)

Article 1

Paragraph 1

"Financing" means the provision of funds or assets directly or indirectly and by whatever means to another person or organization.

10. Proposal submitted by Japan (A/AC.252/1999/WP.10)

Article 1

Paragraph 2

"Funds" means any form of pecuniary benefit.

11. Proposal submitted by Austria on the definition of offences (A/AC.252/1999/WP.11)

Option 1. Articles 2, 20 *bis* and Annex

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of an organization with the knowledge or intent that such financing will be used by that organization, in full or in part, to commit or to prepare the commission of:

(a) An offence within the scope of one of the Conventions listed in the Annex and as specified therein;

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article.

Article 20 *bis*

On depositing its instruments of ratification, acceptance, approval or accession, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, that treaty shall not be deemed to be included in the Annex. Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact, and the depositary shall so notify the other States Parties.

Annex

1. Article 1 (a) of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970, which reads as follows: ...

2. Article 1, paragraph 1, of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, which reads as follows: ...

3. Article 2, paragraph 1 (a)–(c), of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973, which reads as follows: ...

4. Article 1, paragraph 1, of the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, which reads as follows: ...

5. Article 7, paragraph 1 (e), of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980, which reads as follows: ...

6. Article II, paragraph 1, of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988, which reads as follows: ...

7. Article 3, paragraphs 1 (a)–(f) and 2 (c), of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, which read as follows: ...

8. Article 2, paragraphs 1 (a)–(d) and 2 (c), of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988, which read as follows: ...

9. Article 2, paragraph 1, of the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997, which reads as follows: ...

Rationale

1. Chapeau

(a) Deletion of reference to the financing of "a person"

Mere preparatory acts are usually not criminalized under national and international law. However, if the offence is of a particularly dangerous nature, exceptions from this principle are made. In the context of the offences covered by this Convention, this would seem to be true only of organizations. It is this aspect of organization, which typically includes long-term planning, continuity of purpose, division of labour and particular difficulty of detection, which renders these entities and their activities so dangerous that criminalizing the financing of mere preparatory acts seems justifiable. Similar reasoning does not apply to individuals. Furthermore, financing an individual in order to enable that individual to commit terrorist offences would be a participatory offence falling under the scope of the Conventions listed in the Annex.

(b) Deletion of the term "could be used" and inclusion of the term "intent"

The term "could be used" would create too large a scope of application, since it can rarely be excluded that financing *could* be used for committing offences; knowledge may be difficult to prove, hence the addition of "intent".

(c) Retention of preparatory acts insofar as they relate exclusively to organizations

Some reference to preparatory acts should probably be retained since this Convention would otherwise become largely redundant (financing terrorist offences is a participatory crime already covered by existing instruments); by deleting any reference to preparatory acts we would not cover some of the most important cases of financing, such as the financing of a training camp for terrorists.

2. Paragraph 1 (a)

(a) Reference only to the main offences of the Conventions contained in the Annex

The present unqualified reference to "offences within the scope of the Conventions listed in the Annex" creates the danger of very long chains of participation removing a reasonably close nexus to the main offence; the scope of application would become too large.

(b) Deletion of "subject to its ratification by the State Party" and inclusion of an opt-out clause instead

This would be more likely to create a reasonably uniform and certainly a clearer scope of application.

3. Paragraph 3

Deletion of subparagraph (c); same reasoning as in section 2 (a) above.

12. Proposal submitted by Austria on the definition of offences (A/AC.252/1999/WP.12)

Option 2. Articles 1, 2 and 20 *bis*

Article 1

"Main offence" means any offence within the scope of one of the Conventions set forth in the Annex excluding attempts and contributory or participatory offences;

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of an organization with the knowledge or intent that such financing will be used by that organization, in full or in part, to commit or prepare the commission of:

(a) Acts which constitute a main offence within the scope of one of the Conventions listed in the Annex;

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, constitutes a means of intimidating a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article.

Article 20 *bis*

On depositing its instruments of ratification, acceptance, approval or accession, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, that treaty shall not be deemed to be included in the Annex. Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact, and the depositary shall so notify the other States Parties.

Rationale

1. Chapeau

(a) Deletion of reference to the financing of "a person"

Mere preparatory acts are usually not criminalized under national and international law. However, if the offence is of a particularly dangerous nature, exceptions from this principle are made. In the context of the offences covered by this Convention, this would seem to be true only of organizations. It is this aspect of organization, which typically includes long-term planning, continuity of purpose, division of labour and particular difficulty of detection, which renders these entities and their activities so dangerous that criminalizing the financing of mere preparatory acts seems justifiable. Similar reasoning

does not apply to individuals. Furthermore, financing an individual in order to enable that individual to commit terrorist offences would be a participatory offence falling under the scope of the Conventions listed in the Annex.

(b) **Deletion of the term "could be used" and inclusion of the term "intent"**

The term "could be used" would create too large a scope of application, since it can rarely be excluded that financing *could* be used for committing offences; knowledge may be difficult to prove, hence the addition of "intent".

(c) **Retention of preparatory acts insofar as they relate exclusively to organizations**

Some reference to preparatory acts should probably be retained since this Convention would otherwise become largely redundant (financing terrorist offences is a participatory crime already covered by existing instruments); by deleting any reference to preparatory acts we would not cover some of the most important cases of financing, such as the financing of a training-camp for terrorists.

2. **Paragraph 1 (a)**

(a) **Reference only to the main offences of the Conventions contained in the Annex**

The present unqualified reference to "offences within the scope of the Conventions listed in the Annex" creates the danger of very long chains of participation removing a reasonably close nexus to the main offence; the scope of application would become too large.

(b) **Deletion of "subject to its ratification by the State Party" and inclusion of an opt-out clause instead**

This would be more likely to create a reasonably uniform and certainly a clearer scope of application.

3. **Paragraph 3**

Deletion of subparagraph (c); same reasoning as in section 2 (a) above.

13. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.13)

Article 2

Paragraph 1 (a)

Insert the words ", acceptance, approval or accession thereto" between the words "its ratification" and "by the State Party".

14. Proposal submitted by Egypt (A/AC.252/1999/WP.14)

Article 2

Paragraph 1 (a)

"... Conventions listed in the annex to this Convention, to which that person's State is a Party."

15. Proposal submitted by Belgium (A/AC.252/1999/WP.15)

Article 2

Paragraph 1 (a)

Replace the text with the following text:

"An offence within the scope of one of the Conventions itemized in the annex, provided that the State Party in question is also a party to this Convention."

16. Proposal submitted by Guatemala (A/AC.252/1999/WP.16)

Article 2

Paragraph 1

1. Any person commits an offence within the meaning of this Convention if, without any lawful justification, that person proceeds to the financing of a person or organization in the knowledge that such financing is or is likely to be used, in full or in part, in order to prepare or commit:

(a) An offence of a terrorist nature within the scope of one of the Conventions listed in the Annex hereto, provided that at the material time the State Party concerned was a party to that Convention;

(b) An act designed to cause death or serious bodily injury, in a situation of armed conflict, to civilians, and, in other situations, to any person, when, by its nature or context, such act constitutes a means of intimidating a Government, any other institution or entity or the civilian population.

17. Proposal submitted by the Group of South Pacific Countries (SOPAC) (A/AC.252/1999/WP.17)

(Australia, Fiji, Marshall Islands, Micronesia (Federated States of), New Zealand, Papua New Guinea, Samoa, Solomon Islands)

Annex

8 *bis*. International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly of the United Nations on 4 December 1989.

Article 6

(1) Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

(2) Each State Party shall not assist either actively or passively any person or organization in the negotiation, conclusion, implementation, execution or enforcement of any contract or agreement to commit an offence created by this Convention or any

other offences created by the Conventions listed in the Annex hereto to which the State is a Party.

18. Proposal submitted by Austria and Belgium (A/AC.252/1999/WP.18)

Article 5

Paragraph 4

Replace the existing text with the following text:

"Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective and *proportionate* measures".

19. Proposal submitted by Belgium, Canada, Japan and Sri Lanka (A/AC.252/1999/WP.19)

Article 5

Paragraph 1

Delete the words "derived profits from or".

20. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning articles 1 and 2 (A/AC.252/1999/WP.20)

Article 1

For the purpose of this Convention:

1. "Funds" means cash or any other property, tangible or intangible.

2. (a) Terrorist offences means such offences specified in the treaties listed in the Annex to this Convention as are mentioned expressly in the Annex.

(b) On depositing its instrument of ratification, acceptance, approval or accession of this Convention, a State which is not a party to a treaty listed in the Annex may declare that, in the application of this Convention to that State Party, offences specified in that treaty shall not be treated as terrorist offences. Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact and the depositary shall so notify the other States Parties.

(c) States Parties may propose the addition to the list in the Annex of offences specified in another treaty. Once the depositary has received such a proposal from [22] States Parties, the Annex shall be deemed to have been so amended [90] days after the depositary has informed all States Parties that he has received [22] such proposals. However, a State Party which is not a party to such treaty may, within the said period of [90] days, declare that the amendment shall not apply to that State Party. Such declaration shall cease to have effect as soon as the treaty enters into force for the State Party. The State Party shall inform the depositary, which shall so notify the other States Parties.

(d) All declarations and other communications concerning the Annex shall be made to or by the depositary and be in writing.

3. "Organization" means ...

Article 2

1. Any person commits an offence within the meaning of this Convention if that person provides funds by any means, lawful or unlawful, directly or indirectly, to any person or organization, either:

(a) With the intention that the funds should be used for the preparation or commission of terrorist offences; or

(b) In the knowledge that the funds are to be used for such purposes; or

(c) When there is a reasonable likelihood that the funds will be used for such purpose.

21. Revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning articles 1 and 2 (A/AC.252/1999/WP.20/Rev.1)

Article 1

For the purposes of this Convention:

1. "Funds" means cash or any other property, tangible or intangible, however acquired.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession of this Convention, a State which is not a party to a treaty listed in the Annex may declare that, in the application of this Convention to that State Party, offences specified in that treaty shall not be treated as offences for the purposes of article 2 (1) (a). Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact and the depositary shall so notify the other States Parties.

(b) States Parties may propose the addition to the list in the Annex of offences specified in another treaty. Once the depositary has received such a proposal from [22] States Parties, the Annex shall be deemed to have been so amended [90] days after the depositary has informed all States Parties that he has received [22] such proposals. However, a State Party which is not a party to such treaty may, within the said period of [90] days, declare that the amendment shall not apply to that State Party. Such declaration shall cease to have effect as soon as the treaty enters into force for the State Party. The State Party shall inform the depositary, which shall so notify the other States Parties.

(c) All declarations and other communications concerning the Annex shall be made to or by the depositary and be in writing.

3. "Organization" means ...

4. ...

Article 2

1. Any person commits an offence within the meaning of this Convention if that person knowingly provides funds by any means, lawful or unlawful, directly or indirectly, to any person or organization with the intention that the funds should be used, or in the knowledge that the funds are to be used, in full or in part, to prepare for, or to commit:

(a) Offences as defined in Annex I to this Convention; or

(b) An act ...

2. *bis* In order to convict a person for an offence under paragraph 1 of this article, it shall not be necessary to prove that the funds were in fact used to prepare for or to commit a specific offence or an offence within a specific category of offences.

2. Any person ...

3. ...

22. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.252/1999/WP.21)

Article 5

1. Each State Party shall take the necessary measures to ensure that when a person responsible for the management or control of a legal person, or an employee, has, in that capacity, committed an offence under article 2 of this Convention, that legal person shall incur liability in accordance with the provisions of this article.

2. A legal person which is liable in accordance with paragraph 1 shall be subjected to such civil, administrative or criminal measures as take into account the gravity of the matter.

3. [*no change*]

4/5. [*deleted*]

23. Proposal submitted by Italy (A/AC.252/1999/WP.22)

Article 5

Paragraph 5

The provisions of this article cannot be interpreted as affecting the question of the international responsibility of the State.

24. Proposal submitted by Guatemala (A/AC.252/1999/WP.23)

Article 5

Paragraph 1

Replace the existing text with the following text:

"Each State Party shall, within the limits imposed by its general rules relating to the jurisdiction of its courts and other authorities over legal entities, take the necessary measures to ensure that legal entities controlled from or having their registered offices in its territory or engaging in activities either carried out in or otherwise affecting its territory may be held liable when they have knowingly, through the agency of persons or bodies responsible for their management or control, wrongfully derived profits from or participated in the commission of offences referred to in this Convention".

Paragraph 4

Replace the words "responsible for committing an offence referred to in this Convention" with "that have incurred liability in accordance with paragraph 1 of this article".

New paragraph

Insert at the end of the article a new paragraph which reads as follows:

"Each State Party shall inform the Secretary-General of the United Nations of the measures it has taken to comply with this article".

25. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.24)

Article 5

Paragraph 1

Delete the words "derived profits from or" and add "or acquiesced" after the word "participated".

Paragraphs 2 and 4

Merge both paragraphs as follows:

"Each State Party shall ensure that, subject to relevant domestic legislation of the State Party, the said legal entity may incur criminal, civil or administrative liability and is subject to effective measures taken as a result of such liability."

26. Proposal submitted by Australia (A/AC.252/1999/WP.25)

Article 8

Paragraph 2

"*Upon the completion of any proceedings connected with an offence set forth in article 2*, each State party shall take appropriate measures to permit the forfeiture of property ..."

27. Proposal submitted by Germany (A/AC.252/1999/WP.26)

Article 2

1. Any person commits an offence within the meaning of this Convention if that person proceeds with the financing of a person or an organization in the knowledge **or with the intention** that such financing will be used, in full or in part, in order to commit:

(a) An offence within the scope of one of the Conventions itemized in the annex, subject to its ratification by the State Party; or

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person other than in armed conflict, when such act, by its nature or context, **is intended and likely to intimidate** a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or

(c) ...

Rationale

1. Paragraph 1

(a) "unlawfully and intentionally" (second line of the *chapeau*)

Based upon the assumption that the draft is aimed at criminalizing the financing of terrorist acts as a new offence, the mentioning that such financing has to be unlawful seems superfluous. If the financing of terrorist activities constitutes a criminal offence and is not only considered a participatory act, the unlawfulness of such conduct is implied. However, if other States consider a reference to "unlawfully" necessary in the text, the German delegation will not object to retaining it.

The intention of the offender to finance a terrorist act is an essential element of the crime and should therefore be referred to explicitly in the text. The deletion of the words "and intentionally" in the second line of the *chapeau* does not mean that the provision should not refer to the intent. The present proposal suggests dealing with the intention of the offender in connection with the knowledge of the offender, because both knowledge and intention are subjective crime elements. Therefore, the words "or with the intention" were inserted after the word "knowledge" in the third line of the *chapeau*. This makes the words "and intentionally" in the second line redundant.

(b) "or could be used" (third line of the *chapeau*)

As many delegations pointed out during the first reading of article 2, the wording "or could be used" is too vague. The financing should only be a punishable act under this Convention if the money, assets or property provided are likely to be used for terrorist purposes. The language "or could be used" covers all possibilities of a use of the assets or

property for terrorist activities and leaves too much room for interpretation. Therefore, the words "or could be used" do not feature in the German proposal.

(c) "in order to prepare" (third line of the *chapeau*)

The reference to preparatory acts in the *chapeau* is superfluous as it pertains to the preparation of the terrorist crimes as described under subparagraphs (a) and (b) of paragraph 1 but not to the preparation of the financing. Preparatory acts in connection with most crimes under the Conventions referred to in the annex are already criminalized. Thus, there is no need to mention explicitly the preparation of the commission of a terrorist act in paragraph 1 as part of the offence. Consequently, the reference is deleted in the proposed text.

(d) "constitutes a means of intimidating" (subparagraph (b))

The exact meaning of the words "constitutes a means of intimidating a government" is unclear to the German delegation. In our understanding, the intimidation of a Government or the civilian population is one of the purposes of the terrorist act. If an offender within the meaning of this Convention is to finance such a terrorist act, his or her intention should also pertain to the criminal purpose of the terrorist act. This does not mean that the financier of the terrorist act has to share the same motives and beliefs as the person or the organization that commits the terrorist crime. The aim of the Convention is not to criminalize political or religious beliefs. However, in order to consider the financing as a criminal act, the financier of terrorist acts has to know or has to act with the intention that the assets or property, which he or she supplies, will be used not just to kill a person but to commit a terrorist crime.

2. Paragraph 3

In many legal systems, the participation in an attempt of an offence is not a punishable act. It is our understanding that the accomplice will participate in the commission of the offence with a view to achieving the completion of the crime. If the completion of the crime fails, the offender will be punishable for the attempt of the crime, as will be the person who participated as an accomplice, provided that he or she has acted with the intention to complete the crime. As the attempt of the crime is already covered by paragraph 2 of the article, the proposed text deleted the reference to the participation in an attempt in paragraph 3 (b).

28. Proposal submitted by Germany (A/AC.252/1999/WP.27)

Article 17

Paragraph 1

States Parties shall cooperate in the prevention of the offences set forth in article 2, including:

1. ...

(a) ...

(b) ...

(i) ...

(ii) ...

(iii) ...

(c) Measures for the supervision and licensing of all money-transmission agencies;

(d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

Rationale

Article 17 is very important in that it provides for methods for the effective cutting-off of funds destined for terrorist purposes. We propose a broadening of the scope of this article with a view to including two components already used in the fight against money-laundering. One is the supervision, insofar as the transfer of funds is concerned, of agencies engaged in money transmission. The other is the introduction of controls over the physical cross-border transportation of cash and bearer negotiable instruments.

Some terrorist groups, like money-launderers, have recourse in the transfer of funds, e.g., from Western Europe to their home regions, to shadow banking systems (e.g., travel agencies or cultural associations) and physical cross-border transport by couriers. In our experience, a great volume of funds is transmitted in such ways. Germany has enacted the necessary legislation with encouraging results.

The text of subparagraph (d) reproduces recommendation No. 22 of the Financial Action Task Force on Money Laundering.

29. Proposal submitted by the Netherlands (A/AC.252/1999/WP.28)

Article 17

Paragraph 1

Subparagraph (b), *chapeau*

Measures requiring their financial institutions and other professions involved in financial transactions to identify, on the basis of an official or other reliable identifying document, their usual or occasional customers as well as customers in whose interests accounts are opened, and to record the identity of their clients.

For this purpose the States shall ensure:

New subparagraph (b) (iv)

Maintaining an information system aimed at recording information about the economic beneficiaries of legal entities. Upon request, States Parties shall consider exchanging this information.

30. Proposal submitted by Austria (A/AC.252/1999/WP.29)

Article 20 *ter*

1. The Annex may be amended by the addition of treaties that:

(a) Are in force, and

(b) Have been ratified by at least 22 States.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. If a majority of the States Parties do not object to the proposed amendment by written notification no later than [90] days after its circulation, the proposed amendment shall be deemed adopted.

4. The adopted amendment to the Annex shall enter into force 30 days after the deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession for all those States Parties having deposited such an instrument.

31. Proposal submitted by the Islamic Republic of Iran (A/AC.252/1999/WP.30)

Article 8

1. Each State Party shall take appropriate measures to **identify, detect, freeze or seize** any goods, funds or other means used or designed to be used in any manner in order to commit the offences referred to in this Convention, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures for the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.

3. ...

32. Proposal submitted by the United States of America (A/AC.252/1999/WP.31)

Article 17

Paragraph 1

...

(c) By establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 2 of the Convention; and

(d) By cooperating with one another in conducting inquiries, with respect to the offences established in accordance with article 2 of the Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of being involved in offences referred to in this Convention; and

(ii) The movement of funds or property relating to the commission of such offences.

33. Proposal submitted by Bahrain (A/AC.252/1999/WP.32)

Article 17

Paragraph 1 (a *bis*)

Measures to prohibit access into their territories of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;

34. Proposal submitted by Lebanon (A/AC.252/1999/WP.33)

Article 3

The Lebanese delegation proposes that the eighth preambular paragraph become paragraph 1 of article 3 and that the existing text of article 3 become paragraph 2.

Article 3 would thus read:

"1. Any act governed by international humanitarian law is not governed by this Convention.

2. This Convention shall not apply ..."

35. Proposal submitted by the United States of America (A/AC.252/1999/WP.34)

Article 7

...

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack in the territory or against a national of that State;

...

Add a new paragraph 2 (d):

(d) The act for which financing is provided in violation of article 2 is committed in an effort to compel that State to do or abstain from doing any act.

...

5. When more than one State Party claims jurisdiction over one of the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions

appropriately, in particular concerning the conditions for prosecuting and the modalities of mutual legal assistance.

Add a new paragraph 6:

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

36. Proposal submitted by Ecuador and South Africa (A/AC.252/1999/WP.35)

Addition to article 8

...

4. Subject to its domestic law, each State Party shall consider establishing mechanisms whereby such funds, assets and property, or funds derived from the sale thereof, are utilized to indemnify the victims of offences within the ambit of this Convention, or their families.

37. Proposal submitted by Papua New Guinea (A/AC.252/1999/WP.36)

Article 2

Paragraph 1 (b)

Delete the phrase "other than in armed conflict".

Article 5

Paragraph 5

Delete the paragraph *in toto*.

Article 3

Replace the present text with the following text:

"This Convention shall not apply:

"(a) Where the financing is part of an agreement between States Members of the United Nations in the performance of a bilateral, regional or international obligation recognized by international law; and

"(b) Where the offence is committed within a single State, the alleged offender is a national of and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 11 to 17 shall, as appropriate, apply in those cases."

38. Proposal submitted by Australia (A/AC.252/1999/WP.37)

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities located in or organized under the laws of its territory shall be held liable when they knowingly, through the action or acquiescence of one or more persons responsible for their management or control, benefit from or participate in the commission of offences referred to in this Convention.

2. ...

3. ...

4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective, proportionate and deterrent measures.

5. *Delete*

39. Proposal submitted by Australia (A/AC.252/1999/WP.38)

Article 17

Paragraph 1 (f)

Option 1

(b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international;

Option 2

(b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names and requiring financial institutions to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when

establishing business relations or conducting transactions (in particular, opening of accounts or passbooks, entering into fiduciary transactions, renting of safe deposit boxes, performing large cash transactions);

(ii) With respect to the identification of legal entities, requiring financial institutions when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the customer is so authorized and to identify that person;

(iii) Requiring financial institutions to take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted if there are any doubts as to whether these clients or customers are acting on their own behalf, for example, in the case of domiciliary companies (i.e., institutions, corporations, foundations, trusts, etc.) that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records should be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour;

(v) Requiring financial institutions to keep records on customer identification (e.g., copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business correspondence for at least five years after the account is closed. These documents should be available to domestic competent authorities in the context of relevant criminal prosecutions and investigations.

40. Proposal submitted by the Netherlands (A/AC.252/1999/WP.39)

Article 8

1. Each State Party shall take appropriate measures for identification, detection, freezing or seizure of any funds, assets or other property used in any manner in order to commit the offences referred to in this Convention, and the proceeds derived from such offences, for purposes of possible forfeiture.

2. Consistent with due process and applicable domestic law, each State Party shall take appropriate measures for the forfeiture of any funds, assets or other property used for committing the offences referred to in this Convention, and the proceeds derived from such offences.

3. *No change*

41. Proposal submitted by Belgium and Japan (A/AC.252/1999/WP.40)

Addition to article 8

Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

42. Proposal submitted by Australia (A/AC.252/1999/WP.41)

Article 7

1. Each State Party ...

(a) The offence is committed in the territory in that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party ...

43. Proposal submitted by Japan and the Republic of Korea (A/AC.252/1999/WP.42)

Article 4

Paragraph (b)

Replace the words "effective, proportionate and deterrent" by the word "appropriate", so that the paragraph reads:

> "To make those offences punishable by appropriate penalties which take into account the grave nature of those offences."

44. Proposal submitted by Japan (A/AC.252/1999/WP.43)

Article 3

Replace the words "alleged offender" by the following:

> "the alleged offender and the victims of the act or offence set forth in subparagraphs 1 (a) (and 1 (b)) of article 2, the alleged perpetrator of such an act or offence and the person who was financed"

45. Proposal submitted by Bolivia, Colombia, Chile, Ecuador, Mexico and Peru (A/AC.252/1999/WP.44)

Article 12

1. Renumber paragraph 2 as paragraph 3, with the following amendment:

"3. States Parties shall carry out their obligations under *paragraphs 1 and 2* of the present article in conformity ..."

2. Renumber paragraph 3 as paragraph 2.

3. Add a new paragraph 2 *bis* as follows:

"2 *bis*. The Requesting State Party shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized by the Requested State Party."

46. Proposal submitted by France (A/AC.252/1999/WP.45)

Revised texts of articles 2, 5, 8 and 12 and additional provisions

Article 2

1. Any person commits an offence within the meaning of this Convention if that person [unlawfully and intentionally] provides financing with the knowledge or intent that such financing will be used, in full or in part, to commit [or to prepare the commission of]:

(a) An offence as defined in annex 1; or

(b) An act designed to cause death or serious bodily injury to a civilian or to any other person, other than in armed conflict, when such an act, by its nature or context, is designed to intimidate a Government or the civilian population.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice to an offence as set forth in paragraph 1 or 2 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or

[(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article, by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.]

Article 5

1. Each State Party shall take the necessary measures to ensure that legal entities having their registered offices or carrying out activities in its territory are held liable when they have knowingly, through the agency of one or more persons responsible for their

management or control, [derived profits from or] participated in the commission of offences referred to in this Convention.

2. Such legal entities may incur criminal, civil or administrative liability, according to the fundamental legal principles of the State Party.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

4. Each State Party shall ensure, in particular, that legal entities responsible for committing an offence referred to in this Convention are subject to effective measures that are commensurate with the offence.

[5. No provision of this article can have the effect of calling into question the international responsibility of the State.]

Article 8

1. Each State Party shall take appropriate measures to allow for identification, detection, freezing or seizure of any goods, funds or other means used or designed to be used in any manner in order to commit the offences referred to in this Convention, [as well as the proceeds derived from such offences,] for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its fundamental legal principles, to permit the forfeiture of property, funds and other means used or intended to be used for committing the offences referred to in this Convention.

3. Each State Party may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such [proceeds or] property, or funds derived from the sale of such [proceeds or] property.

4. Subject to its domestic law, each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to indemnify the victims of criminal acts resulting from the commission of offences within the ambit of this Convention, or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences referred to in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. States Parties may not claim bank secrecy to refuse mutual legal assistance provided for under the present article.

4. None of the offences referred to in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the ground that it concerns a fiscal offence.

Additional provisions

1. Reinsert the annex as proposed by the Austrian delegation in document A/AC.252/1999/WP.11.

2. Reinsert the following subparagraphs proposed by the United Kingdom delegation in document A/AC.252/1999/WP.20 under article 1:

"(b) On depositing its instrument of ratification, acceptance, approval or accession of this Convention, a State which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to that State Party, offences specified in that treaty shall not be treated as **offences within the ambit of this Convention**. Such declaration shall cease to have effect as soon as that treaty enters into force for that State Party, which shall notify the depositary of that fact and the depositary shall so notify the other States Parties."

(c) and (d) *with no changes*

47. Proposal submitted by Guatemala (A/AC.252/1999/WP.46)

Article 5, paragraph 1[a]

Replace the existing text by the following:

"1. To the extent that its fundamental legal principles and international law allow it to do so, each State Party shall take the necessary measures to ensure that legal entities other than States can be held liable or sanctioned whenever they have, with the full knowledge of one or more persons responsible for their management or control, derived profits from or participated in the commission of offences referred to in this Convention."

Explanatory comments

It would seem that the text of paragraph 1 of article 5 proposed in A/AC.252/L.7 does not spell out with sufficient precision and comprehensiveness the cases where a State party is under an obligation to take action under the paragraph. In A/AC.252/1999/WP.23 we sought to remedy this by spelling out those cases. We have now realized, however, that the enumeration of the latter contained in that working paper was not complete and could also raise some difficulties. Instead of trying to rectify this, we have, in this new proposal, adopted an entirely different and far simpler approach, namely, to provide simply that a State party is under an obligation to take action under paragraph 1 whenever it is in a position lawfully and properly to do so. This would cover all cases where the legal entity that misbehaves has links sufficiently close to the territory or authorities of the State party to enable it to do something about the misconduct. The words "other than States" would appear to render paragraph 5 of article 5 unnecessary. (Moreover, in the text of paragraph 1 we are proposing corrections to some mistakes contained in the English translation of that paragraph.)

[a] See A/AC.252/1999/WP.23.

48. Proposal submitted by France (A/AC.252/1999/WP.47)

Revised text of article 17

Article 17

Option 1

States Parties shall cooperate in the prevention of the offences set forth in article 2, including:

1. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories activities of persons, groups and organizations that knowingly encourage, instigate, organize or engage in the commission of offences as set forth in article 2;

(b) Measures requiring their financial institutions and other professions involved in financial transactions to improve the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of anonymous accounts or the opening of accounts under obviously fictitious names;

[Adopting regulations prohibiting the opening of accounts whose beneficiary is unidentified or unidentifiable.]

(ii) With respect to the identification of legal entities, verifying the existence and the legal structure of the customer by obtaining, from the customer or public records, proof of incorporation as a company, including information on the name of the client, its legal form, its address, its directors and provisions on the legal entity's authority to bind;

(iii) Taking measures for preserving for at least five years the necessary documents in connection with the transactions carried out;

(c) Measures for the supervision and licensing of all money-transmission agencies;

(d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

2. By exchanging accurate and verified information in accordance with their domestic law, and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences as set forth in article 2, in particular:

(a) By establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 2 of the Convention;

(b) By cooperating with one another in conducting inquiries, with respect to the offences established in accordance with article 2 of the Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of being involved in offences referred to in this Convention;

(ii) The movement of funds or property relating to the commission of such offences.

[3. Each State Party shall not assist either actively or passively any person or organization in the negotiation, conclusion, implementation, execution or enforcement of any contract or agreement to commit an offence as set forth in article 2.]

Option 2

Proposal submitted by Australia (A/AC.252/1999/WP.38).

49. Proposal submitted by India (A/AC.252/1999/WP.48)

Preamble

Recalling General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should "elaborate a draft international convention for the suppression of terrorist financing to supplement existing international instruments, and subsequently will address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority basis, the elaboration of a comprehensive convention on international terrorism".

Article 2

1. ...

(a) ...

(b) An act designed to cause death or serious bodily injury to any person, when such an act, by its nature or context, constitutes a means of intimidating the population or any Government.

Article 5

Delete paragraph 5.

New article

States parties shall cooperate in carrying out their obligations under this Convention and shall refrain from committing, either directly or indirectly, any of the acts prohibited under this Convention and the Conventions in Annex I, or in any manner assisting, encouraging or permitting their commission.

50. Proposal submitted by Austria, Belgium, Japan, Sweden and Switzerland (A/AC.252/1999/WP.49)

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally provides funds, directly or indirectly and however acquired, to any person or organization committing or attempting to commit:[a]

[a] The inclusion of the term "or attempting to commit" in the *chapeau* is subject to the deletion of any reference to attempts and participatory offences under the scope of the Conventions listed in the annex.

(a) Any offence within the scope of one of the Conventions listed in the Annex and as specified therein; or

[(b) ...]

Such financing shall [either] be made with the intention that the funds be used [or in the knowledge that the funds are to be used], in whole or in part, for the commission of the offences mentioned above.

2. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 of the present article.

51. Proposal submitted by the Republic of Korea (A/AC.252/1999/WP.50)

Article 5[a]

Paragraph 1

Include the acts of employees undertaken in the name of the legal entity.

Paragraph 2

Replace the words "the fundamental legal principles" with the words "relevant domestic legislation".

[a] See A/AC.252/1999/WP.45.

52. Proposal submitted by Australia (A/AC.252/1999/WP.51)

Revised texts of articles 4 and 7

Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;

(b) To make those offences punishable by **appropriate** penalties which take into account the grave nature of the offences.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an attack in the territory of or against a national of that State;

(b) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(c) The offence was directed towards or resulted in the carrying out of an attack against a state government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State;

(d) An act for which financing is provided in respect of an offence under article 2 is committed in an effort to compel that State to do or abstain from doing any act.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of the present article.

5. When more than one State Party claims jurisdiction over the offences referred to in this Convention, the relevant States Parties shall strive to coordinate their actions **appropriately**, in particular concerning the conditions for prosecution and the terms and conditions for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

53. Proposal submitted by Mexico (A/AC.252/1999/WP.52)

Amendments to article 17[a]

1. Renumber paragraph 1 (c) as paragraph 1 (b) (iv).

2. Renumber paragraph 1 (d) as paragraph 1 (c) with the following change:

"(c) States shall also consider implementing measures to detect or monitor ..."

[a] See A/AC.252/1999/WP.47.

54. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.252/1999/WP.53)

Article 5

1. Each State Party shall take the necessary measures to ensure that a legal entity located or carrying out activities in its territory is made liable when a person responsible for its management or control knew, or had reasonable cause to believe, that the legal entity was being used in the furtherance of an offence under article 2 of this Convention.

2. Such legal entity shall, in accordance with the domestic law of the State Party, be subjected to such effective measures, whether criminal, civil or administrative, as reflect the degree of knowledge of the offence by officers of the legal entity.

3. Liability under this article is without prejudice to the criminal liability of individuals.

4. [*Deleted*]

5. [*Deleted*]

55. Proposal submitted by Saudi Arabia (A/AC.252/1999/WP.54)

Article 2

We propose to move paragraph 5 of article 8, which is included in the French proposal (A/AC.252/1999/WP.45), to article 2. We propose to change it as follows:

Article 2

Additional paragraph 4:

No provision of this convention shall be construed as prejudicing the rights of third parties acting in good faith.

56. Proposal submitted by Belgium and Sweden (A/AC.252/1999/WP.55)

Delete articles 13 and 14.

57. Proposal submitted by India (A/AC.252/1999/WP.56)

Article 7

Paragraph 2

...

(e) That the State Party has jurisdiction, in accordance with any of the conventions listed in annex I, over the offence for which financing is provided.

58. Proposal submitted by France (A/AC.252/1999/WP.57)

Amend A/AC.252/1999/WP.47 as follows:

Article 17

1. Unchanged

2.

(a)

(b)

(i)

(ii)

(c) In an emergency, and if they consider it necessary, States Parties may exchange information through the International Criminal Police Organization (Interpol).

59. Proposal submitted by the Islamic Republic of Iran and Lebanon (A/AC.252/1999/WP.58)

Article 7, paragraph 6

Subject to the relevant rules and principles of international law, this Convention does not prejudice the criminal jurisdiction of a State established in accordance with its domestic law.

60. Proposal submitted by the Republic of Korea concerning article 2, paragraph 1 (a), and an additional article (A/AC.252/1999/WP.59)

Article 2, paragraph 1 (a)

(a) An offence within the scope of one of the Conventions listed in the Annex, subject to its ratification, acceptance, approval or accession by the State Party;

Article[a]

On depositing its instrument of ratification, acceptance, approval or accession of this Convention, a State which is not a party to a treaty listed in the Annex may declare in writing that, in the application of this Convention to that State Party, offences specified in that treaty shall be treated as offences for the purposes of article 2, paragraph 1 (a).

[a] The number of this article will be determined at a later stage.

61. Proposal submitted by Papua New Guinea (A/AC.252/1999/WP.60)

Article 1

Definitions

"Financing" means the provision of funds, assets or other property to a person or organization.

"Funds" means cash or any other property, tangible or intangible, however acquired, including but not limited to bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and any other negotiable instrument, in any form, including electronic or digital.

Note: If article 2 (1) uses the word "funds", then there will be no need for a definition of "financing".

Annex IV

A. Informal summary of the discussion in the Working Group, prepared by the Rapporteur: first reading of draft articles 1 to 8, 12, paragraphs 3 and 4, and 17 on the basis of document A/AC.252/L.7

Article 1

1. The Working Group undertook its first reading of paragraphs 1 to 3 of article 1 on the basis of proposals contained in documents A/AC.252/L.7 and A/AC.252/1999/WP.1 (in the case of para.1).

Paragraph 1

2. Suggestions were made to replace the term "transfer" by the terms "provision", "making available of" or "supply" so as to provide a broader scope of the term "financing" beyond the technical connotations of "transfer". Attention was drawn, however, to the possible interpretation of the phrase "making available" as including assistance other than through financing. The retention of the word "transfer" was preferred by others, as clearly reflecting the content of the term "financing".

3. Different views were expressed as regards the notion of "reception". While some preferred its deletion (see A/AC.252/1999/WP.6 and WP.8) as an offence under article 2 was connected with "financing of a person", others favoured retaining it. In the latter regard, it was noted that the concept of reception could be kept if it was linked to the knowledge of the ultimate use or to the administration of funds. It was suggested further that the word "reception" should be replaced by "receipt".

4. Suggestions were also made to delete the phrase "or other property" as being superfluous. Another view was expressed in favour of the deletion of the word "assets". Still others preferred retaining both terms as distinct notions. Some preferred interpreting "property" as covering only arms, explosives and similar goods. Reference was also made to services in kind.

5. As to the question of retaining the reference to "whether lawful or unlawful", the suggestion was made to move the phrase to before the words "or funds". However, a preference was expressed for the retention of the current formulation. It was also recommended that the phrase be replaced by the words "lawfully or unlawfully acquired".

6. Concerning the phrase "directly or indirectly", a preference was expressed for its deletion, including the possibility of inserting the words in the *chapeau* of article 2 (1), after the word "proceeds". Others supported the retention of the phrase as reflected in article 1 (1). Further suggestions were as follows: to delete "to or from another person or another organization"; and to add at the end of the paragraph the following: "with the intent of aiding the perpetration of offences set forth in article 2".

7. The suggestion was made to replace paragraph 1 with the formulation contained in document A/AC.252/1999/WP.9.

8. With regard to the proposal for article 1 (1) contained in document A/AC.252/1999/WP.1, while some delegations noted that subparagraphs (a), (b) and (c) of the proposal introduced greater precision into the provision, others commented on their restrictive character.

9. Concerning the final paragraph in the proposal contained in document A/AC.252/1999/WP.1, two positions emerged. While some supported its inclusion, others objected to its inclusion on the grounds that it would unnecessarily limit the scope of the convention and diminish its effectiveness. A proposal was made to replace the words "used for humanitarian purposes by the beneficiary person or organization" at the end of the paragraph by the words "meant exclusively to be used for humanitarian purposes". Others favoured the inclusion of the underlying concept contained in the paragraph elsewhere in the text of the draft Convention.

Paragraph 2

10. While support was expressed for the use of a generic definition of "funds" such as "any form of pecuniary benefit" (A/AC.252/1999/WP.10), others spoke in favour of the retention of the current formulation. The following proposals were also made: to insert the phrase "but not limited to" after the word "including"; and to replace the definition of "funds" with a reference to "cash or any other property, tangible or intangible" (see A/AC.252/1999/WP.20).

Paragraph 3

11. Although some supported the retention of the current formulation, others favoured the introduction of more precise and detailed elements of the definition of "organization" (see A/AC.252/1999/WP.6).

12. Further proposals in connection with the paragraph included the insertion of the phrase "of three or more" before the word "persons"; as well as the inclusion of a reference to State terrorism.

Additional definitions suggested for inclusion in article 1

13. In connection with one of the possible options for article 2, a definition of the phrase "main offence" was proposed (see A/AC.252/1999/WP.12). A further proposal included a definition of "terrorist offences", with reference to the list of applicable offences contained in the Annex, as well as, *inter alia*, a mechanism for the addition of Conventions to the Annex in the future (see A/AC.252/1999/WP.20). It was also recommended that the concept of "legal entity" should be defined.

Article 2

14. The Working Group undertook its first reading of article 2 on the basis of the proposal contained in document A/AC.252/L.7. Several additional proposals were submitted during the Working Group's consideration of the draft article.

15. It was suggested that article 2 should be carefully reviewed so as to avoid the criminalization of minor offences. Furthermore, preference was expressed for avoiding the establishment of different regimes for the extradition of perpetrators and financiers, respectively.

Paragraph 1: *chapeau*

16. Different views were expressed regarding the use of the term "person". Some suggested that it should cover both natural and legal persons. Others preferred the insertion of the phrase "or State" after the words "or any person". While the suggestion was made to retain the words "a person" after the phrase "financing of", a preference was also expressed for their deletion, so as not to criminalize the financing of preparatory acts carried out by a person (see A/AC.252/1999/WP.11 and 12).

17. While some considered the expression "unlawfully" to be redundant, others favoured its retention in the text so as not to criminalize otherwise lawful acts of financing which might have the unintended result of aiding the commission of offences under the article. Likewise, although some delegations suggested the deletion of the reference to "intentionally", others preferred its retention. It was further proposed that the phrase "or with the intention" (see A/AC.252/1999/WP.26), or the phrase "or intent", be inserted after the phrase "in the knowledge". With regard to the phrase "and intentionally proceeds", it was proposed to insert the words "directly and indirectly" after "proceeds".

18. The phrase "will or could be used" was the subject of several proposals intended to clarify the scope of the offences being created by draft article 2. Hence, the suggestion was made to replace the phrase "will ... be used" by "is ... to be used"; others recommended either deleting "or could" before the phrase "be used" (see A/AC.252/1999/WP.2) or replacing it by "is designed to" or "is likely to". Alternatively, some spoke in favour of the retention of the phrase "or could" as in the draft text under consideration.

19. Concerning the reference to the preparation or commission of the offences specified in the draft article, the suggestion was made to replace the phrase "in order to prepare or commit" by "to commit or to prepare the commission of" (see A/AC.292/1999/WP.11). Some favoured the deletion of the phrase "to prepare" since ancillary offences were covered by paragraph 3, while others favoured its retention. Likewise, opposing views were expressed as regards the addition of the phrase "threaten to commit" at the end of the *chapeau*.

Paragraph 1 (a)

20. It was suggested further to clarify the notion of offence by inserting after the word "offence" the phrase "of a terrorist nature" (see A/AC.252/1999/WP.16).

21. As regards the means by which the States can become parties to the Conventions listed in the Annex, the suggestion was made to insert the phrase "acceptance, approval or accession thereto" after the word "ratification" (see A/AC.252/1999/WP.13). Regarding the phrase "subject to its ratification by the State Party", in addition to the various suggestions contained in documents A/AC.252/1999/WP. 11, 12 and 14 to 16 (see also WP.20, para. 2 (b)), it was suggested that the above phrase should be deleted.

22. Concerning the Annex to the draft convention, some suggested the inclusion of a provision allowing for future additions to the Annex (see, for example, A/AC.252/1999/WP.20, in the context of article 1), and others specified further Conventions to be added to the Annex, in particular, the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries (see A/AC.252/1999/WP.17) and the 1971 Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance. The suggestion was made to add to the future list of offences other acts such as nuclear terrorism and the destruction of the environment. It was also proposed that the list of Conventions in the Annex should include references to the respective articles dealing with major offences, so as to facilitate the judicial application of

the draft convention at the national level (see A/AC.252/1999/WP.11).

Paragraph 1 (b)

23. While some delegations expressed reservations regarding the subparagraph as being too broad in scope, even suggesting its deletion, others preferred its retention, maintaining that not all terrorist offences were covered by paragraph 1 (a). As regards the reference to "armed conflict", concerns were expressed regarding the meaning of the phrase. It was suggested that the words "other than in armed conflict" should be deleted (see A/AC.252/1999/WP.36). In addition, a specific modification (A/AC.252/1999/WP.16) was suggested.

24. Suggestions were made to replace the phrase "constitutes a means of intimidating" by "is intended and likely to intimidate" (see A/AC.252/1999/WP.26) and to add the phrase "any other institution or entity" after the word "Government" (see A/AC.252/1999/WP.16). Addition of the notion of damage to infrastructure was also proposed.

25. The following proposals were also made: to replace the entire paragraph by a new text (see A/AC.252/1999/WP.20); and to insert a new paragraph A to article 2 (see A/AC.252/1999/WP.8).

Paragraph 2

26. Suggestions were made both in favour of the deletion of the paragraph, so as to avoid the practical problem of proving attempt in the case of financing, and in favour of its retention, in order to criminalize such acts.

Paragraph 3

27. While a preference for retaining the text of the paragraph in its current formulation was expressed, the following suggestions in regard to subparagraphs (a) and (c) were also made: in relation to subparagraph (a), the deletion of the cross-reference to paragraph 2, as establishing an excessively remote chain of causation; opposing views regarding the retention of subparagraph (c) were also expressed (see A/AC.252/1999/WP.2).

Article 3

28. The Working Group undertook its first reading of article 3 on the basis of the proposal contained in document A/AC.252/L.7.

29. While a preference was expressed for retaining the provision in the form contained in the text under consideration, the suggestion was made to include a reference to "legal entities" in the provision. This was opposed in the Working Group as it unnecessarily extended the scope of application of the article.

30. It was proposed that the phrase "Except as regards article 5", should be added at the beginning of the article. It was also suggested that the article should be modified to include the text as proposed in document A/AC.252/1999/WP.43 after the phrase "alleged offender", so as to broaden the scope of the exclusion clause.

31. It was further suggested that a new paragraph 1 (see A/AC.252/1999/WP.33) should be inserted to expressly exclude the application of humanitarian law from the operation of the convention. Hence, the current text would be included as new paragraph 2.

32. A replacement text for article 3 to include a reference to financial agreements between States in the performance of their international obligations (see A/AC.252/1999/WP.36) was also proposed.

Article 4

33. The Working Group undertook its first reading of article 4 on the basis of the proposal contained in document A/AC.252/L.7.

34. It was proposed that the phrase "effective, proportionate and deterrent" should be replaced by the word "appropriate", so as to be consistent with the corresponding provision of the International Convention for the Suppression of Terrorist Bombings.

Article 5

35. The Working Group undertook its first reading of article 5 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1

36. While general support for the concept underlying the paragraph was expressed, many delegations made suggestions aimed at improving its formulation. Hence, the suggestion was made to replace the phrase "having their registered offices" by "organized under its laws". It was also recommended that the language of the provision should be strengthened by replacing the word "may" by "shall". However, objections were expressed in that regard.

37. Concerns were expressed regarding the specific legal connotation of the word "agency". In that connection, suggestions were made either to delete the phrase "agency of" or the entire phrase "through the agency of one or more persons responsible for their management or control".

Alternatively, the preference was also expressed for replacing the word "agency" by the phrase "action or acquiescence of" (see A/AC.252/1999/WP.37).

38. While some delegations highlighted the need to raise the threshold of the offence to require knowledge of the acts in question by the entire management body, others opposed that suggestion.

39. On the question of "derived profits", the following suggestions were made: to delete the phrase "derived profits from or" (see A/AC.252/1999/WP.19 and 24); to replace "derived profits" by the word "benefited"; or to add the word "wrongfully" before the phrase. It was also suggested to add the phrase "or acquiesced" after the word "participated" (see A/AC.252/1999/WP.24).

40. With regard to the phrase "referred to in this Convention", support was expressed for replacing it by "set forth in article 2".

41. Four proposals for new formulations of paragraph 1 were also made (see A/AC.252/1999/WP.3 and 21, against which objections were expressly raised in the Working Group; and A/AC.252/1999/WP.23 and 46).

Paragraph 2

42. While preference was expressed for retaining the text in its current form, suggestions to replace the entire paragraph were also made (see A/AC.252/1999/WP.21 and 24 (which proposed the merger of paras. 2 and 4)). The following drafting suggestions were also made: to replace the word "may" by "shall" so as to create a specific obligation; and to delete the phrase "Subject to the fundamental legal principles of the State Party". The latter proposal was opposed as it would render the draft convention insensitive to the basic norms of different legal systems.

Paragraph 3

43. While some delegations supported the retention of the text in its current form, others suggested the deletion of the phrase "or of their accomplices", so as to be consistent with their national laws, as well as to avoid the criminalization of petty offences.

Paragraph 4

44. While the suggestion was made to delete the paragraph, some delegations offered modifications of its provisions. These included specific suggestions to merge paragraphs 2 and 4 (see A/AC.252/1999/WP.24) or to replace the phrase "responsible for committing an offence referred to in this Convention" in paragraph 4 by the phrase "that have incurred liability in accordance with paragraph 1 of this article" (see A/AC.252/1999/WP.23). Another suggestion was to insert the phrase "in accordance with its domestic legislation" before the word "ensure".

45. In order to avoid ambiguity and to apply traditional notions of proportionality of sanctions, the suggestion was made to insert the phrase "and proportionate" after the word "effective" and to delete the phrase "that have substantial economic consequences for them" (A/AC.252/1999/WP.18). A further proposal called for the inclusion of the phrase "effective, proportionate and deterrent measures" (see A/AC.252/1999/WP.37) so as to take into account the grave nature of the offences in question.

Paragraph 5

46. Some delegations suggested the deletion of paragraph 5 (see A/AC.252/1999/WP.21 and 36) since the concept of State responsibility, as understood in general international law, was beyond the scope of the draft Convention. Others considered the possibility of redrafting the paragraph's provisions so as to make it more specific (A/AC.252/1999/WP.22).

Paragraph 5 *bis*

47. The proposal was made that an additional paragraph 5 *bis* should be introduced requiring that the Secretary-General of the United Nations be informed of the measures taken by each State party to implement the article (see A/AC.252/1999/WP.23).

Article 6

48. The Working Group undertook its first reading of article 6 on the basis of the proposal contained in document A/AC.252/L.7.

49. The insertion of a new paragraph 2 in article 6 was proposed so as to restrict State involvement in the negotiation, conclusion, implementation, execution or enforcement of any contract or agreement to commit any offences within the scope of the draft convention (see A/AC.252/1999/WP.17). Differing views regarding the inclusion of the proposed text were expressed. The suggestion to delete in the proposed text the reference to offences other than those created by the draft convention was put forward in the Working Group.

Article 7

50. The Working Group undertook its first reading of article 7 on the basis of the proposal contained in document A/AC.252/L.7.

51. Differing views were expressed regarding the usefulness of the insertion in the article of a reference to "legal entities".

Paragraph 1

52. The insertion of a reference to the commission of an offence on board a vessel or an aircraft was proposed as a new subparagraph (A/AC.252/1999/WP.41) so as to expand the scope of the jurisdictional clause.

Paragraph 2

53. Concerning subparagraph (a), it was suggested that the phrase "in the territory or" should be inserted after the word "attack", so as to include territorial jurisdiction within the purview of the provision (see A/AC.252/1999/WP.34).

54. Another proposal was the inclusion of a new subparagraph (d) requiring that the act be committed in an effort to compel the State both to do or abstain from doing any act (see A/AC.252/1999/WP.34) .

Paragraph 5

55. The following modifications were suggested: to replace the word "efficiently" by "appropriately" (see A/AC.252/1999/WP.34); and to replace the phrase "terms and conditions" by "modalities". In addition, opposing views were expressed as regards the deletion of paragraph 5.

New paragraph 6

56. The proposal was made to insert a new paragraph 6 so as not to exclude the exercise of any criminal jurisdiction in accordance with the domestic law of a State party (see A/AC.252/1999/WP.34).

Article 8

57. The Working Group undertook its first reading of article 8 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1

58. The suggestion was made to delete the phrase "to allow for" and replace the phrase "identification, detection, freezing or seizure" by the words "identify, detect, freeze or seize" (see A/AC.252/1999/WP.30), thus strengthening the language.

59. Other proposals of a drafting nature were as follows: to insert "and" after the word "detection"; to replace "goods" by the word "property"; and to replace the phrase "goods, funds or other means" by the phrase "funds, assets or other property" (see A/AC.252/1999/WP.39).

60. It was suggested either to delete (see A/AC.252/1999/WP.39) or to replace the phrase "designed to be used" either by more permissive language such as "capable of being used", or by the stronger formulation "intended to be used".

61. The insertion of the phrase "or other deprivation" after the word "forfeiture" was also proposed.

Paragraph 2

62. The following additions to the text were proposed: to insert at the beginning of the paragraph either the phrase "Upon the completion of any proceedings connected with an offence set forth in article 2" (A/AC.252/1999/WP.25), or "Consistent with due process and applicable domestic law" (see A/AC.252/1999/WP.39); and to insert the phrase "or other deprivation" after the word "forfeiture". Though the inclusion of a reference to "proceeds" was also favoured by some (see A/AC.252/1999/WP.39), an objection was raised against such inclusion on the grounds that the notion was unclear in the context of the paragraph. The comment was made that the phrase "intended to be used" was too narrow, and should be replaced by "capable of being used". The deletion of the phrase "permit the" was also put forward (see A/AC.252/1999/WP.30).

Paragraph 2 *bis*

63. Some delegations (A/AC.252/1999/WP.40) expressed a preference for the inclusion as paragraph 2 *bis* of the following text of article 5 (9) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

> "Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party."

An objection was voiced against the inclusion of such a provision.

Paragraph 3

64. A preference was expressed for the deletion of the word "proceeds". As regards the use of forfeited property, two suggestions were made. One suggestion envisaged a provision ensuring the use of such property to compensate the victims of terrorist offences, or their relatives (A/AC.252/1999/WP.35) as new paragraph 4, while another was aimed at requiring that such property be utilized towards contributing to development projects that addressed the causes of terrorism.

Article 12, paragraphs 3 and 4

65. The Working Group undertook its first reading of paragraphs 3 and 4 of article 12 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 3

66. While some delegations preferred the retention of the current text, the proposal was made to insert a provision, as new paragraph 2 *bis* (see A/AC.252/1999/WP.44), based on article XVI (2) of the 1996 Inter-American Convention against Corruption, which provides:

> "The requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State."

67. It was also proposed that existing paragraph 2 should be renumbered as paragraph 3, and vice versa. New paragraph 3 would then be amended to include a reference to "paragraphs 1 and 2" in the first line (A/AC.252/1999/WP.44).

Paragraph 4

68. While a preference was expressed for the deletion of the paragraph, the following additions to the current text were also proposed: to insert in the second sentence the phrase "based on article 2" (see A/AC.252/1999/WP.4); and to insert the following phrase at the end of the paragraph: "without prejudice to the constitutional limits and the basic legislation of the States Parties" (ibid.). Objections were raised with respect to the latter proposal.

Article 17

69. The Working Group undertook its first reading of article 17 on the basis of the proposal contained in document A/AC.252/L.7.

Paragraph 1 (a)

70. The following additions to the text were proposed: to insert "Effective" before the word "measures"; and to insert the word "illegal" before "activities" in order to take into account, for example, freedom of speech and other constitutional guarantees existing in some States. The latter proposal was opposed in the Working Group. Proposed deletions were as follows: to delete the word "groups"; and to delete the word "knowingly".

71. It was noted that in order for the provision to be successfully implemented, it should also take into account the constitutional norms of States parties.

New paragraph 1 (a) *bis*

72. It was proposed that the paragraph should include as new paragraph 1 (a) *bis* an additional obligation on States parties to prohibit the access into their territories of persons, groups and organizations that knowingly encouraged, instigated, organized or engaged in the commission of offences as set forth in article 2 (A/AC.252/1999/WP.32).

Paragraph 1 (b): *chapeau*

73. As regards the term "other professions", which was deemed to be unclear, the following suggestions were made: to replace it with the phrase "as well as other institutions and individuals"; to replace the phrase "other professions involved in" by the phrase "other institutions or entities that carry out"; and to replace "professions" with the word "entities".

74. Concerning the issue of identification of customers of financial institutions, the following suggestions were made: to replace the phrase "to improve the identification of" by "to identify, on the basis of an official or other reliable identifying document" (see A/AC.252/1999/WP.28); and to insert at the end of the first sentence the phrase "and to record the identity of their clients" (see A/AC.252/1999/WP.28). While some favoured replacing the word "consider" by "ensure" (see A/AC.252/1999/WP.28), others spoke against that.

75. The proposal was made to replace subparagraphs (i) to (iii) by a text based on recommendations 10, 11 and 12 of the Financial Action Task Force on Money Laundering, so as to ensure consistency in language (see A/AC.252/1999/WP.38).

Paragraph 1 (b) (i)

76. It was proposed that the word "regulations" should be replaced by the broader term "measures". Regarding the

prohibition of anonymous accounts and accounts opened under fictitious names, the following suggestions were made: to replace the phrase "anonymous accounts or the opening of accounts under obviously fictitious names" by "accounts whose beneficiary is unidentified or unidentifiable" (A/AC.252/1999/WP.5), which was opposed in the Working Group; to replace that phrase by the phrase "accounts whose holders or beneficiaries are not identifiable through formal means"; and to replace it by the phrase "accounts whose holders are not identifiable through formal means". The addition of the word "holder" before "beneficiary" in the formulation contained in document A/AC.252/1999/WP.5 was also proposed.

Paragraph 1 (b) (ii)

77. It was suggested that the word "verifying" should be replaced by the phrase "the adoption of measures requiring financial institutions to verify" so as to clarify the obligations of States and financial institutions, respectively; and that the word "legal" should be inserted before the word "existence". It was also proposed that "directors" be replaced with the broader notion of "legal representatives".

78. Some favoured further clarification of the terms "legal structure", "legal form" and the phrase "the legal entity's authority to bind".

Paragraph 1 (b) (iii)

79. In order to clarify the phrase "for preserving", it was suggested that it be replaced by the phrase "requiring financial institutions to preserve".

New paragraph 1 (b) (iv)

80. A new subparagraph (iv) regarding the establishment of an information system for the purpose of recording and sharing information on the economic beneficiaries of legal entities was proposed (see A/AC.252/1999/WP.28).

New paragraph 1 (c)

81. Two proposals for a new subparagraph (c) (see A/AC.252/1999/WP.27 and 31) were presented to the Working Group, regarding the supervision of money transmission agencies and the exchange of information, respectively.

New paragraph 1 (d)

82. Two proposals for a new subparagraph (d) were presented to the Working Group. The first proposal (see A/AC.252/1999/WP.27) concerned the monitoring of the physical cross-border transport of cash and bearer negotiable instruments. The following modifications to that proposal were made: to delete the phrase "implementation of"; and to delete "physical" and replace the phrase "cash and bearer negotiable instruments" by the phrase "funds, as referred to in article 1".

83. The second proposal (see A/AC.252/1999/WP.31) suggested modalities for cooperation in conducting inquiries with respect to the offences established in accordance with article 2.

B. Informal summary of the discussion in the Working Group, prepared by the Rapporteur: second reading of draft articles 1 to 8, 12 and 17 on the basis of, *inter alia*, documents A/AC.252/1999/WP.45, 47 and 51

Article 1

84. Following informal consultations on article 1, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, the Coordinator presented an oral report to the Working Group. He outlined the main issues discussed and noted that, *inter alia*, a general trend had emerged favouring the retention of the crime of financing as a main crime, instead of a participatory crime linked to another crime. It was noted that such an approach called for a careful drafting of article 2, clearly limiting its scope of application. The hope was expressed that remaining issues would be dealt with during the inter-sessional period.

85. A working paper on articles 1 and 2 (see annex I.B) was introduced by the sponsor of the draft convention (A/AC.252/L.7 and Corr.1) at the last meeting of the Working Group for consideration at the session of the Working Group of the Sixth Committee in September 1999.

Article 2

86. The Working Group undertook its second reading of article 2 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

87. While some delegations supported the approach taken in the text of criminalizing the financing of terrorism as a distinct offence, others viewed it as a participatory offence. A further reservation was also expressed regarding the criminalization of the act of financing in case the terrorist act was not committed or at least attempted.

Paragraph 1 — *chapeau*

88. While some delegations continued to consider the expression "unlawfully" to be redundant, others favoured its retention (see A/AC.252/1999/WP.49). Support was also expressed for the deletion of the word "intentionally" as being already encapsulated in the word "intent". An alternative was also presented, namely to replace the phrase "unlawfully and intentionally" by "voluntarily".

89. Differing views were expressed regarding the deletion of the phrase "[or to prepare the commission of]" at the end of the paragraph (see A/AC.252/1999/WP.49). Concerning the phrase "will be used", the suggestion to replace it by "is likely to be used" was reiterated. The option of either replacing the word "or" by "and" after "knowledge" or deleting "knowledge" was proposed.

90. In order to expand the scope of the offence, it was suggested that the phrase "person or organization" be included in the text. Furthermore, some delegations reiterated their preference for the inclusion of the phrase "directly or indirectly".

Paragraph 1 (a)

91. A preference was expressed for replacing the phrase "an offence" by "any offence" or "offences". Opposing views regarding the need to further specify the crimes in the annex to the draft convention were presented. Some delegations reiterated their preference for including a mechanism allowing for the addition of new Conventions to the Annex (see, for example, A/AC.252/1999/WP.20/Rev.1, in the context of article 1), thereby expanding the scope of the draft convention. The recommendation was made that the provision should require that States become parties to the respective Conventions in the annex by the usual means of ratification, approval, acceptance or accession.

Paragraph 1 (b)

92. While reservations were expressed by some delegations regarding the broad scope of the provision, others proposed that reference be made to "any person" and to "population", instead of "civilian" and "a civilian population", respectively (see A/AC.252/1999/WP.48), so as to further expand the scope.

93. Suggestions were made to replace the word "injury" by "harm" so as to be more accurate, and to delete the reference to "armed conflict" (see A/AC.252/1999/WP.48). In particular, concern was expressed over the implication of the use of the phrase "armed conflict" for liberation movements. In addition, concern was expressed that the draft might exclude action by groups not covered by humanitarian law.

94. Support was expressed for the inclusion of the notion of "threat" and of damage to property and the environment.

95. An additional phrase requiring that the financing in question be made with the intention or knowledge that the funds would be utilized for the commission of the offence was proposed for insertion after subparagraph (b) (see A/AC.252/1999/WP.49).

Paragraph 3 (c)

96. Opposing views were expressed regarding the retention of the subparagraph.

Introduction of a revised working paper for future consideration

97. At the last meeting of the Working Group, a working paper on articles 1 and 2 (see annex I.B) was introduced by the sponsor of the draft convention (see A/AC.252/L.7 and Corr.1) for consideration at the meeting of the Working Group of the Sixth Committee in September 1999.

Article 3

98. Informal consultations on article 3, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. The Coordinator of the informal consultations presented an oral report at the last meeting of the Working Group in which he noted the general preference among delegations for deferring further consideration of the provision until the finalization of articles 1 and 2. Hence, it was recommended that the formulation of article 3 remain as that contained in document A/AC.252/L.7 and Corr.1, subject to further discussions to be held during the session of the Working Group of the Sixth Committee in September 1999.

Article 4

99. Informal consultations on article 4, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. As a result, the Coordinator of the informal consultations subsequently proposed a revised text of article 4 (see A/AC.252/1999/WP.51). While the new text remained substantially the same as that in A/AC.252/L.7 and Corr.1, it was noted that the original reference to "effective, proportionate and deterrent" penalties had been replaced by "appropriate" penalties.

Article 5

100. The Working Group undertook its second reading of article 5 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

Paragraph 1

101. The suggestion was made to add the phrase ", within the limits imposed by its general rules relating to the jurisdiction of its courts and other authorities over legal entities" after the phrase "Each State Party shall".

102. The following additions and modifications to the reference in the provision specifying the necessary link between the State party and the legal entity concerned were proposed: to replace the phrase beginning with the words "having their registered offices" and ending with "in its territory" by either "controlled from or having their registered offices or property in its territory or engaging in activities either carried out in or otherwise affecting its territory" or by "located in or organized under the laws of its territory". The suggestion was also made to add the phrase "located in or organized under the laws of its territory" after the phrase beginning with the words "having their registered offices" and ending with "in its territory". A further formulation was proposed in document A/AC.252/1999/WP.53.

103. While some delegations expressed the view that the reference to "are held liable" in the second line was unnecessary since the concept was already covered by the word "shall" in the first line, and therefore that it could be replaced with "may be held liable", others opposed that idea.

104. Several concerns were expressed regarding the need for the various language texts to be closely aligned with the original French text. For example, it was pointed out that the French text referred to knowledge being required of the persons and not the legal entity, as stated in the English version.

105. Similar concerns arose regarding the reference to "carrying out activities", as well as the continued reference to the concept of "agency" in the English text undergoing second reading. Some delegations reiterated their preference for the deletion of the word "agency", which had different legal connotations in certain legal systems and thus could cause confusion. Others proposed that it be replaced by "action or acquiescence of" so as to reflect the legal requirement more precisely.

106. Proposals were made to delete the reference to "one or more" persons, to add the phrase "or bodies" before "responsible", as well as to add the word "wrongfully" before "derived profits".

107. Concerning the inclusion of a reference to "derived profits from or", which the sponsor of the revised text indicated had been left in square brackets to reflect the fact that no clear consensus on the issue existed during the first reading, some delegations expressed the preference for its deletion, while others suggested that it be replaced with the word "benefited".

108. A preference was also expressed for the inclusion of a reference to the vicarious liability of the legal entity derived from the actions of employees undertaken in its name (see A/AC.252/1999/WP.50). This view was opposed in the Working Group.

109. On the question of the reference to participation contained in the phrase "participated in the commission of", while some preferred that it be replaced with "committed", others supported its retention.

110. A further formulation of paragraph 1 was proposed in document A/AC.252/1999/WP.53.

Paragraph 2

111. Opposing views were expressed regarding the more permissive reference to "may". While the preference was expressed for replacing the word with "shall", this was opposed in the Working Group. The suggestion was also made that the reference to the "criminal" liability of legal entities should be deleted.

112. Concerns were expressed regarding the inclusion of the phrase "according to the fundamental legal principles of the State Party". While some favoured its retention, others preferred replacing the phrase with a reference to "relevant domestic legislation" or "in accordance with the domestic law of the State Party" (see A/AC.252/1999/WP.53). A further proposed solution was to delete the reference to "fundamental".

113. Following a request from the Chairman that delegations comment on the possibility raised during the first reading that articles 2 and 4 be merged, some stated their preference for retaining two separate provisions, while others expressed flexibility on the issue. The following two merged texts were proposed: "Each State Party shall ensure that, subject to relevant domestic legislation of the State Party, the said legal entity may incur criminal, civil or administrative liability and is subject to effective measures taken as a result of such liability", and "A legal person which is liable in accordance with paragraph 1 shall be subjected to such civil, administrative or criminal measures

that are commensurate with the offence." Concerning the reference in the latter proposal to "that are commensurate with the offence", which existed in paragraph 4 of the text under consideration, a further refinement was proposed so as to replace that phrase by "as take into account the gravity of the matter".

Paragraph 3

114. The suggestion was made to replace the phrase "having committed the offences" with "involved in the commission of the offences". A further text for the provision was proposed in document A/AC.252/1999/WP.53.

Paragraph 4

115. While the preference was expressed by some delegations for the deletion of the entire paragraph (see A/AC.252/1999/WP.53), other delegations preferred its retention with several modifications. It was suggested that the phrase "in particular" be deleted. Furthermore, the suggestion was made that the various language texts should be aligned with the French original by replacing the reference to "effective measures that are commensurate with the offence" by "effective and proportionate measures". Alternatively, proposals were made to insert the phrase "proportionate and deterrent" after "effective" and to insert the phrase "which take into account the grave nature of the offence" after "measures".

116. The possibility of the merger of paragraphs 2 and 4 was discussed in the Working Group. See the discussion on paragraph 2 above (paras. 111–113) in this regard.

Paragraph 5

117. Opposing views were expressed regarding the retention of the provision. While some expressed a preference for its deletion (see A/AC.252/1999/WP.48 and 53), stating, *inter alia*, that it dealt with matters beyond the purview of the draft convention, others supported either the text under consideration or the following new formulation: "The provisions of this article cannot be interpreted as affecting the question of the international responsibility of the State" (reproduced in A/AC.252/1999/WP.22). A further group of delegations linked the deletion of the provision to the insertion of a precise definition of "legal entity" in article 1.

Article 6

118. Informal consultations on article 6, based on the deliberations of the Working Group during the first reading of the provision in document A/AC.252/L.7 and Corr.1, were held during the session. The Coordinator of the informal consultations presented an oral report at the last meeting of the Working Group in which he commented on an emerging trend, among those delegations that were consulted, to delete the phrase "and are punished by penalties consistent with their grave nature" at the end of the provision. It was explained that the deletion of this phrase would remove the overlap with article 4. Some delegations reserved their positions in that regard. The Coordinator proposed retention of the text of article 6, as amended, for consideration at the session of the Working Group of the Sixth Committee in September 1999.

Article 7

119. The Working Group undertook its second reading of article 7 on the basis of the revised text contained in document A/AC.252/1999/WP.51. The suggestion was made that the provision should indicate the options in paragraphs 1 and 2 as alternatives by adding the word "or" after subparagraphs 1 (a) and (b), and subparagraphs 2 (a), (b) and (c).

Paragraph 2

120. With regard to subparagraphs (a) and (c), the proposal was made to replace the word "attack" by the phrase "offences covered in article 2".

121. Concerning subparagraph (d), the following alternative formulations were proposed: "The offence resulted in an act committed in an effort to compel that State to do or abstain from doing any act"; "The offence for which financing is provided in contravention of article 2 is committed in an attempt to compel that State to do or abstain from doing any act"; "The offence was directed towards compelling that State to do or abstain from doing any act"; or "The offence was directed towards or resulted in an act committed in an attempt to compel that State to do or abstain from doing any act".

122. The following additional subparagraphs were proposed for insertion under paragraph 2: "That State Party has jurisdiction, in accordance with any of the Conventions listed in annex I, over the offence for which financing is provided" (see A/AC.252/1999/WP.56); and "The offence is committed on board an aircraft which is operated by the Government of that State".

Paragraph 5

123. Support was expressed for replacing the phrase "terms and conditions" by "modalities". The suggestion was also made to delete the provision and insert it into article 9.

Paragraph 6

124. While some delegations supported the provision as being common to all anti-terrorism Conventions, others expressed reservations on the necessity of its inclusion in the draft convention under consideration. The insertion of the phrase "Subject to respect for relevant rules of international law" at the beginning of the provision was proposed by way of compromise. A further variation of this proposal was submitted (see A/AC.252/1999/WP.58).

Article 8

125. The Working Group undertook its second reading of article 8 on the basis of the revised text contained in document A/AC.252/1999/WP.45. It was recommended that the various language versions of the text under consideration should be aligned with the original French text. In particular, reference was made to the need for consistency in the use of the words "allow" and "permit", "goods" and "property", and the phrases "designed to be used" and "intended to be used".

126. It was suggested, by way of a general comment, that the provision should be limited to covering financing offences only.

Paragraph 1

127. Concerning the word "allow", while some delegations preferred its deletion, others suggested that it be replaced with "provide for". The insertion of the word "and" after "detection" was supported. Although the inclusion of a reference to proceeds by adding the phrase "as well as the proceeds derived from such offences" was supported, other delegations expressly opposed such expansion of the scope of the provision.

Paragraph 2

128. Support was expressed for retaining the provision in its current form. However, other delegations proposed the following modifications by way of improving its formulation: to add "Consistent with due process and applicable domestic law" at the beginning; to replace the phrase "fundamental legal principles" by "domestic law", which was opposed in the Working Group; to replace "permit" by "provide for"; to delete the phrase "permit the"; to add the phrase "and the proceeds derived from such offences" after "convention", which was opposed in the Working Group; and to delete the reference to "its" before "fundamental legal principles".

Paragraph 3

129. While the preference was expressed for retaining the reference to proceeds contained in the square brackets, its inclusion in the text was opposed in the Working Group.

Paragraph 4

130. While support was expressed for retaining the provision as contained in the text under consideration, others proposed deleting the phrase "subject to domestic law", as well as replacing the word "indemnify" by "compensate".

Paragraph 5

131. Opposing views were expressed in connection with the deletion of the phrase "acting in good faith". A further proposal was made to move the provision to article 2 (see A/AC.252/1999/WP.54).

Additional paragraph suggested for inclusion in article 8

132. It was proposed that the text of article 5 (9) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances should be included as a new paragraph in article 8.

Article 12

133. The Working Group undertook its second reading of article 12 on the basis of the revised text contained in document A/AC.252/1999/WP.45.

Paragraph 1

134. Concerns were expressed regarding the scope of the term "investigations", which could encompass speculative investigations. It was thus suggested to insert the word "criminal" before "investigations". Other suggested modifications were: to delete the reference to "or criminal"; to delete the word "brought"; and to replace the phrase "at their disposal" by "in their possession".

Paragraph 2

135. Concerns were expressed regarding the consistency of the last sentence of the provision with article 11 (2) of the draft convention, as contained in document A/AC.252/L.7 and Corr.1.

136. It was suggested that the scope of the paragraph should be expanded to include the obligations contained in paragraph 3. The proposal was also made to switch paragraphs 2 and 3, and renumber them accordingly.

Paragraph 3

137. The proposal was made to replace the entire provision by "State Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy". The inclusion of the word "solely" after "assistance" was made by way of further refining the language of the proposed new text.

Additional paragraph 3 *bis* suggested for inclusion in article 12

138. It was proposed that the following provision should be added to article 12 as new paragraph 3 *bis*: "The requesting State shall not use any information received that is protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized by the requested State Party." The inclusion of this text was opposed in the Working Group.

139. It was further suggested that the scope of the proposed new paragraph should be expanded in accordance with the provisions of article 7 (13) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Paragraph 4

140. The following two modifications were suggested: to add the phrase "based on article 2" before "on the ground"; and to add the word "sole" before "ground".

Article 17

141. The Working Group undertook its second reading of article 17 on the basis of the revised text contained in document A/AC.252/1999/WP.47, which included a revised text as option 1 and a reference to a text prepared by another delegation, contained in document A/AC.252/1999/WP.38, as option 2. The Working Group limited its discussion to option 1.

Paragraph 1 (a)

142. It was noted that the English text should be aligned with the French original by adding a reference to "illegal" before the word "activities". A preference for the deletion of the word "groups" was expressed.

Paragraph 1 (b)

143. The suggestion was made to replace the word "improve" by the phrase "utilize the most efficient measures for".

144. Regarding subparagraph (i), support was expressed for replacing the word "regulations" by "measures". Of the two proposed formulations for the subparagraph contained in the text under consideration, some delegations expressed a preference for the text in square brackets. It was suggested that the formulation of the text in square brackets could be improved by having the phrase "holder or" inserted before "beneficiary". A further suggestion was made to merge the two proposed texts.

145. Concerning subparagraph (ii), the preference was expressed for expanding its scope of application to include shareholders and officers. It was suggested that the word "verifying" should be replaced by the phrases "the adoption of measures requiring financial institutions to verify", or "requiring financial institutions, when necessary, to take measures to verify". The addition of the word "legal" before "existence", and the deletion of the word "legal" before "structure", was also proposed. It was further suggested that the phrase beginning with the words "from the customer" and ending with "to bind" should be replaced by the following text: "either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity".

146. In connection with subparagraph (iii), it was proposed that the reference to "for preserving" be replaced with "requiring financial institutions to preserve", or that the latter half of the provision beginning from the word "preserving" to the end be replaced with the following: "requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international".

Paragraph 1 (c) and (d)

147. It was proposed that subparagraph (c) of paragraph 1 should be renumbered as paragraph 1 (b) (iv), and that subparagraph (d) of paragraph 1 should be renumbered as paragraph 1 (c) and modified to replace the phrase "Implementation of feasible measures to detect or monitor" by "States shall also consider implementing measures to detect or monitor" (see A/AC.252/1999/WP.52).

148. The insertion of a new paragraph was also proposed (see A/AC.252/1999/WP.57).

Paragraph 3

149. Opposing views were expressed regarding the retention of paragraph 3 as contained in square brackets, which was based on the proposal contained in A/AC.252/1999/WP.47. A third group of delegations proposed that the paragraph should begin with the phrase "States shall ensure that no assistance is provided".

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